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LANSING

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ENROLLED BILL ANALYSIS

BILL NUMBER: HB 4309 (H-2) HB 4311 (H-5) and HB 4312 (H-3)

TOPIC: Incorporation of emergency service authorities by municipalities (HB 4309); Intergovernmental transfers of functions and responsibilities (HB 4311); and Interlocal operating agreements by public entities (HB 4312)

SPONSORS: Representative Eileen Kowall (HB 4309)
Representative Paul Opsommer (HB 4311)
Representative Thomas Hooker (HB 4312)

COMMITTEES: House Committee: Local, Intergovernmental and Regional Affairs
Senate Committee: Reforms, Restructuring and Reinventing

DATE: November 14, 2011

ADMINISTRATION POSITION: The Department is neutral on the package.

PROBLEM/BACKGROUND:

Statutes governing the incorporation of emergency service authorities (1988 PA 57); intergovernmental transfers of functions (1967 PA 8); and interlocal operating agreements by public entities under the Urban Cooperation Act (1967 PA 7) contain specific guarantees that a newly formed authority, consolidating public entity, or political subdivision is bound to the terms and conditions of an existing collective bargaining agreement(s). These statutes also provide that a transferred employee would not be placed in any worse position as to seniority, pension, wages, sick leave, vacation, health and welfare insurance or other benefits obtained under the predecessor system. Since these guarantees were often perceived as “impediments” by public employers, efforts were blocked to encourage consolidations into emergency service authorities, intergovernmental transfer of functions and interlocal operating agreements. Much of the avoidance by public employers to embrace these consolidation plans resulted from ambiguities as to post merger rights and obligations under current labor laws. The intention of the bills are to bring clarity to the laws and reduce those impediments. Given the foreseeable impact on existing bargaining units it is likely that the legislation may spur additional unfair labor practice charges, unit clarification filings, and ancillary litigation.

DESCRIPTION OF BILLS:

These bills vest public sector entities (municipalities, political subdivisions or public agencies) that become parties to an emergency services authority (HB 4309), or contract for an intergovernmental transfer of functions and responsibilities (HB 4311), or engage in an interlocal operating agreement under the Urban Cooperation Act (HB 4312) with the sole responsibility, authority, and right to manage and direct the services or functions performed in connection with that authority, contract or joint operating agreement. As such, negotiations on the content or language contained in any contract, interlocal operating agreement or articles of incorporation is a permissive subject of bargaining. However, if a public entity and a bargaining representative reach agreement on issues that would obligate the new public entity that will function as the successor employer, then that contract, joint agreement or articles of incorporation must include these obligations.

Each bill clarifies that no employment relationship exist between the predecessor employers of a public entity and the proposed joint system or authority, in other words, a co-employer relationship is not formed under the new agreement or joint contract. Further, each bill specifically states that the new employing entity is subject to the same duty to bargain that exists under PERA.

The bills provide that 180 days prior to the actual transfer of employees & personnel, the incorporating municipalities must affirm in writing to the Authority or entity, the name of the employees who will be transferred to the new public entity. If such employees are represented by a labor organization, the successor entity is subject to the prior terms and conditions of employment unless modified in accordance with PERA or for 6 months, whichever is earlier. The bills also state that, subject to a change in a bargaining representative under PERA, the existing bargaining representatives shall continue to represent those employees.

The bills provide that, in circumstances where 2 or more labor organizations claim to represent the employees, or where a substantial portion of the work force is unrepresented and there is no mutual agreement, either party or MERC may request a representation election. Absent a mutual agreement on merger of seniority lists, dispute concerning the formation of a single seniority list will be heard by one arbitrator appointed by MERC. Finally, the bills clarify that there is no requirement that a municipality or authority assume a collective bargaining agreement between another municipality and its employees.

SUMMARY OF ARGUMENTS:

Pros:

The intent of this bill package (including Senate Bills 8, 9 and 493), is to encourage inter-governmental cooperation, and encourage municipalities and public entities to join together to provide common services while enjoying economy of scale and more efficient use of resources and infrastructure. This may reduce the burden on local taxpayers while providing higher quality services.

These bills also seek to protect collective bargaining rights for affected employees without requiring a newly formed or reconstituted employer to assume the predecessor contract(s) covering the transferred employees. These bills provide certainty by requiring that employees receive ample prior notice of any transfer and, absent a MERC election, such employees maintain their pre-transfer terms and conditions of employment for 6 months or until a successor agreement is reached, whichever occurs earliest.

Cons:

The bills may result in unwarranted controversy between the parties over matters involving collective bargaining and labor management relations and could result in costly litigation as the new laws are challenged.

The bills do not fully address the potential for disputes concerning seniority issues and pension rights impacting transferred employees, as they do not contain a statutory presumption that the seniority lists are dovetailed based on original dates of hire or original seniority dates.

Requiring pre-consolidation contract terms and conditions be honored for a 6-month period may result in the newly formed public entity being required to maintain multiple levels of health and pension plans, which may be costly to manage, even if for a short period of time.

In the instance of emergency service authorities, HB 4309 does not address circumstances where one or more of the municipal employers and affected bargaining units are subject to multi-year Act 312 awards.

FISCAL/ECONOMIC IMPACT:

Revenue or budgetary implications in the bills to the –

(a) Department

Budgetary: Concerned that there is the potential for an increase in the number of unfair labor practice charges, unit clarification petitions filed by parties, and other litigation under this legislation.

Expands MERC responsibilities.

Revenue: None

Comments: None

(b) State

Budgetary: None

Revenue: None

Comments: If these bills serve the purpose of encouraging inter-governmental cooperative efforts, this may result in the need for less financial assistance from the State when there are fewer separate public entities providing the same services.

(c) Local Government

Comments: If these bills serve the purpose of encouraging intergovernmental cooperative efforts, this should result in an economy of scale for each participating local government that currently is required to provide services on its own. However, because of various ambiguities in the bills, local government may find themselves embroiled in costly litigation.

OTHER STATE DEPARTMENTS:

Unknown

ANY OTHER PERTINENT INFORMATION:

Senate Bill 493 amends PERA by prohibiting bargaining and reserving to the public employers the sole discretion to (a) make a **decision** to enter into an intergovernmental agreement to consolidate services or jointly perform functions or the otherwise collaborate and services; (b) the **procedures** for obtaining a contract for the transfer of functions under an intergovernmental agreement; or (c) the **identities** of other parties to an intergovernmental agreement.

ADMINISTRATIVE RULES IMPACT:

MERC functions as arbiter of party disputes such as seniority issues. Administrative rules will need to be revised.